REMARKS

Claims 1-21 were presented for examination in the present application and remain pending upon entry of the instant amendment. Claims 1 and 9 are independent.

Claims 1, 2, 8, 9, and 18 have been amended to correct obvious errors. Applicant submits that these amendments merely make explicit what had been implicit in the claims.

Independent claims 1 and 9, as well as dependent claims 2-8 and 10-21, were rejected under 35 U.S.C. §103 over U.S. Publication No. 20030021234 to Soltysiak et al. (Soltysiak) in view of U.S. Publication No. 20030063566 to Ambramovitch et al. (Ambramovitch).

Applicant respectfully traverses these rejections.

Applicant submits that the Office Action has failed to complete the underlying factual inquiries necessary during an obviousness analysis. Specifically, Applicant submits that the Office Action has failed to resolve the level of one of ordinary skill in the art as stated in *Graham* v. *John Deere Co.* and reiterated by the Supreme Court in *KSR International Co.* v. *Teleflex Inc.* Accordingly, Applicant submits that the Office Action has failed to meet the burden necessary to establish a *prima facie* case of obviousness.

Notwithstanding the above, Applicant submits that independent claims 1 and 9 are not disclosed or suggested by the proposed combination of Soltysiak and Ambramovitch.

Independent claim 1 recites the step of "safety-based monitoring of an error-based limit value, which is and/or can be predetermined, being carried out on a transmission medium for response to identified incorrectly transmitted data packets and identified correctly transmitted data packets".

The Office Action asserts that Soltysiak discloses a safety-based monitoring of an error-based limit value. Applicant traverses this assertion.

Rather, Applicant submits that Soltysiak only discloses identifying and counting bit errors that occur during a predetermined monitoring period. Thus, Soltysiak only discloses monitoring a number of errors per unit time.

Clearly, counting a number of errors as in Soltysiak does not disclose or suggest the claimed "safety-based monitoring" that identifies "incorrectly transmitted data packets" and "correctly transmitted data packets".

The Office Action fails to assert that Abramovitch discloses or suggests the claimed "safety-based monitoring". Thus, Applicant submits that the proposed combination of cited art fails to disclose or suggest each element of claim 1.

Even if one was to assume that Soltysiak discloses the claimed "safety-based monitoring" (which it does not), Applicant submits that the Office Action has mis-characterized the teachings of Abramovitch.

The Office Action asserts that Abramovitch "teaches that the DUT is effectively a transmission media across which an expected data record is sent and received". See page 3, lines 4-5. In contrast, Applicant submits that this assertion clearly mis-characterizes the teachings of Abramovitch.

Abramovitch explicitly relates to identifying and synchronizing permuted channels in a parallel channel bit error rate tester. Abramovitch discloses that a parallel channel bit error rate tester is used in communications systems having a number of separate channels and discloses that such testers provide a means for testing many channels simultaneously, so that the time necessary for testing a communications system will be reduced. Furthermore, Abramovitch points out that the test procedures must be

repeated as long as all the (receiver/analyzer) input channels has been assigned to a corresponding (transmitter/generator) output channel. Moreover, Abramovitch discloses that there are three distinct steps in the bit error rate <u>testing</u> for communications systems and the like, namely an identification or mapping step, a synchronization step, and a testing step.

Any hint, however, that the <u>testing</u> disclosed by Abramovitch is applicable to methods for monitoring a <u>transmission of data packets</u> between at least two network subscribers as claimed and could be used in addition to the claimed "payload data" is simply absent from Abramovitch.

To the contrary, no portion of the disclosure of Abramovitch discloses that the testing procedure and system are suitable for use during normal data transmissions.

In fact, the passages of Abramovitch cited by the Office Action, all point out that the parallel channel bit error rate tester is used for applying <u>tests</u>. However, the telecommunications formats SONET, or SOH are just described in terms of an example for simulated <u>test</u> frame formats. Thus, Abramovitch merely points out problems relating to testing in which the test phase uses data that <u>simulates</u> specific telecommunications formats, such as SONET or SDH.

Applicant respectfully submits that the Office Action's conclusion that the device under test (DUT) of Abramovitch is "effectively a transmission media" as claimed clearly mis-characterizes the explicit teachings of Abramovitch.

Accordingly, one skilled in the art of media transmission generally or data transmission specifically simply would not modify Soltysiak in view of the Abramovitch in the manner proposed by the Office Action.

Still further, Applicant submits that the modification to the teachings of Abramovitch proposed by the Office Action is contrary to the established function of Abramovitch.

Again, Abramovitch is directed to identifying and synchronizing permuted channels in a parallel channel bit error rate <u>tester</u>. Thus, Abramovitch explicitly teaches that the identifying and synchronizing function is related to <u>testing</u>. In contrast, the modification proposed by the Office Action requires more than a combination of known elements, but rather requires the use of prior art elements in Abramovitch according to functions different then their established functions.

For at least the reasons set forth above, Applicant submits that the proposed combination of cited art fails to disclose or suggest independent claim 1, or claims 2-8 that depend therefrom. Therefore, claims 1-8 are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 1-8 are respectfully requested.

Independent claim 9 requires, in part, "means for safety-based monitoring of an error-based limit value, which can be and/or is predetermined, for response to identified incorrectly transmitted data packets and identified correctly transmitted data packets"

As set forth in detail above with respect to claim 1, Applicant respectfully traverses the assertion that Soltysiak discloses a safety-based monitoring of an error-based limit value.

Rather, Applicant submits that Soltysiak <u>only</u> discloses monitoring a number of errors per unit time and that counting a number of errors as in Soltysiak does not disclose or suggest the claimed "means for safety-based monitoring" that identifies "incorrectly transmitted data packets" and "correctly transmitted data packets".

Even if one was to assume that Soltysiak discloses the claimed "means for

safety-based monitoring" (which it does not), Applicant submits that the Office Action has mis-characterized the teachings of Abramovitch for at least the reasons set forth above with respect to claim 1. Briefly stated, Applicant submits that Abramovitch is limited to <u>testing</u> and, not the transmission of data packets between at least two network subscribers as in claim 9.

Further, any hint that the <u>testing</u> disclosed by Abramovitch is applicable to <u>transmission of data packets</u> between at least two network subscribers as provided in claim 9 and could be used in addition to the claimed "payload data" is simply absent from Abramovitch. Accordingly, one skilled in the art of media transmission generally or data transmission specifically simply would not modify Soltysiak in view of the Abramovitch in the manner proposed by the Office Action.

Still further, Applicant submits that the modification to Abramovitch proposed by the Office Action is contrary to the function of Abramovitch. Abramovitch is directed to identifying and synchronizing permuted channels in a parallel channel bit error rate <u>tester</u>. Thus, Abramovitch explicitly teaches the function of its identifying and synchronizing as being related to <u>testing</u>. In contrast, the modification proposed by the Office Action requires more than a combination of known elements, but rather requires the use of prior art elements in Abramovitch according to functions different then their established functions.
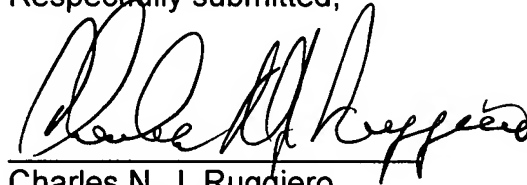
For at least the reasons set forth above, Applicant submits that the proposed combination of cited art fails to disclose or suggest independent claim 9, or claims 10-21 that depend therefrom. Therefor, claims 9-21 are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 9-21 are respectfully requested.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicant's attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

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